

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

<b>In re:</b>  <b>W.R. GRACE &amp; CO., <i>et al.</i>,</b>  <b>Debtors.</b>	<b>§</b> <b>§</b> <b>§</b> <b>§</b> <b>§</b> <b>§</b>	<b>Chapter 11</b>  <b>Jointly Administered</b> <b>Case No. 01-01139 (JKF)</b>
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**FEE AUDITOR'S FINAL REPORT REGARDING QUARTERLY  
FEE APPLICATION OF DELOITTE TAX LLP FOR THE PERIOD OF  
JANUARY 1, 2009 THROUGH SEPTEMBER 30, 2009**

This is the final report of Warren H. Smith & Associates, P.C., acting in its capacity as fee auditor in the above-captioned bankruptcy proceedings, regarding the Quarterly Fee Application of Deloitte Tax LLP for the Period of January 1, 2009 through September 30, 2009 (the "Application").

**BACKGROUND**

1. Deloitte Tax LLP ("Deloitte Tax") was retained to provide tax services to the Debtors and Debtors-in-Possession. In the Application, Deloitte Tax seeks approval of fees totaling \$125,471.00 and expenses totaling \$2,143.00 for its services from January 1, 2009 through September 30, 2009 (the "Application Period").<sup>1</sup>

2. In conducting this audit and reaching the conclusions and recommendations contained herein, we reviewed in detail the Application in its entirety, including each of the time and expense entries included in the exhibits to the Application, for compliance with 11 U.S.C. § 330, Local Rule 2016-2 of the Local Rules of the United States Bankruptcy Court for the District of Delaware, Amended Effective February 1, 2010, and the United States Trustee Guidelines for

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<sup>1</sup>The period of January 1, 2009 through September 30, 2009 encompasses the Thirty-Second, Thirty-Third, and Thirty-Fourth Interim Periods.

Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. §330, Issued January 30, 1996 (the "U.S. Trustee Guidelines"), as well as for consistency with precedent established in the United States Bankruptcy Court for the District of Delaware, the United States District Court for the District of Delaware, and the Third Circuit Court of Appeals. We served an initial report on Deloitte Tax based on our review, and we received a response from Deloitte Tax, portions of which response are quoted herein.

## **DISCUSSION**

### General Issues

3. We note that Deloitte Tax's Application reflects a voluntary fee reduction of \$9,817.00. We further note that this amount includes a reduction of \$9,779.00 agreed to by Deloitte Tax and the Debtors, which reduction was taken in March 2009 for work on Stock Option Planning, as well as an additional reduction of \$38.00 identified by Deloitte Tax.

### Specific Time and Expense Entries

4. We noted that Deloitte Tax billed \$28,415.00 in fees for work pertaining to fee application preparation. See Exhibit "A." This computes to 21% of Deloitte Tax's total fees for the Application Period. Although the Court has not set a defined limit on fees for fee application preparation in this case, such fees must still be reasonable under Section 330 of the Bankruptcy Code. A number of courts have established 5% of the total fees billed as a guideline for reasonableness for such fees. Thus, we asked Deloitte Tax to explain why the amount of its fee application preparation fees should be considered reasonable. Deloitte Tax responded:

In accordance with the guidelines set forth in this paragraph ... pertaining to billing for fee application preparation, Deloitte Tax hereby agrees to reduce this \$28,415.00 amount to \$6,764.00, an amount equal to 5% of the total fees incurred for the Interim Period ( $\$135,288.00 \times .05 = \$6,764.00$ ).

We appreciate Deloitte Tax's response and, consistent with the response, we recommend that the \$28,451.00 incurred for fee application preparation be reduced to \$6,764.00, for a reduction of \$21,651.00 in fees.

5. We noted that timekeepers Jared H Gordon (\$680), Anu T Alex (\$400), Jennifer Duong (\$290), and Valerie R Reed (\$70) billed 17.20 hours for \$7,863.00 in fees working on Deloitte Tax's engagement letter(s):

1/21/2009	Alex, Anu T.	Administrative work relating to finalizing invoices and bankruptcy applications. Drafting, reviewing and finalizing the engagement letter, as well as calls with J.F., C.F., W.C. and JG to resolve issues relating the engagement letter.	6.30	\$400	\$2,520
1/22/2009	Alex, Anu T.	Administrative work relating to finalizing invoices and bankruptcy applications. Drafting, reviewing and finalizing the engagement letter.	0.50	\$400	\$200
1/22/2009	Duong, Jennifer	Proofread 2009 engagement letter - DT General Business Terms	1.25	\$290	\$363
1/12/2009	Gordon, Jared H	billing matters re: new engagement letter	0.90	\$680	\$612
1/13/2009	Gordon, Jared H	Drafting, reviewing and finalizing the engagement letter and G.B.T., as well as calls with J.F., C.F., W.C., and AA to resolve issues relating the engagement letter.	1.40	\$680	\$952

1/15/2009	Gordon, Jared H	Drafting, reviewing and finalizing the engagement letter and G.B.T., as well as calls with J.F., C.F., W.C., and AA to resolve issues relating the engagement letter.	0.70	\$680	\$476
1/16/2009	Gordon, Jared H	Drafting, reviewing and finalizing the engagement letter and G.B.T., as well as calls with W.C. and AA to resolve issues relating the engagement letter.	0.40	\$680	\$272
1/21/2009	Gordon, Jared H	Drafting, reviewing and finalizing the engagement letter and G.B.T., as well as calls with J.F., C.F., W.C., and AA to resolve issues relating the engagement letter.	2.20	\$680	\$1,496
1/22/2009	Gordon, Jared H	Drafting, reviewing and finalizing the engagement letter and G.B.T.s.	0.90	\$680	\$612
2/3/2009	Alex, Anu T	reviewing revisions to EL	0.50	\$400	\$200
3/12/2009	Cosella, Kerrie A	update EL signature page, discussion w/Jared re contact/ mail letter/file	0.30	\$70	\$21
3/13/2009	Reed, Valerie R	Format and print engagement letter for Jared	0.50	\$70	\$35
4/24/2009	Sacasas, M P	Typing related to eng letter	0.50	\$95	\$48
4/24/2009	Reed, Valerie R	Tax Advisory EL	0.50	\$75	\$35
5/12/2009	Reed, Valerie R	Check for signed EL	0.30	\$70	\$21
			<b>17.20</b>		<b>\$7,863</b>

It appears to us that time spent on an engagement letter is an administrative task which Deloitte Tax would be required to perform in order to work for any client, regardless of whether the client is in bankruptcy, and that the time spent on these tasks is, therefore, overhead. Thus, we asked Deloitte Tax to explain why the estate should compensate these fees. Deloitte Tax responded:

Although certain additional measures are required in connection with the preparation and approval of engagement letters for clients who are involved in bankruptcy proceedings such as the Debtors, Deloitte Tax nonetheless agrees to waive the foregoing \$7,863.00 in compensation sought for work performed in connection with these measures during the Interim Period.

We appreciate Deloitte Tax's response and recommend a reduction of \$7,863.00 in fees.

6. We noted that timekeepers Maryam Farooq and Jennifer Duong, both billing at an hourly rate of \$290.00, spent 4.30 hours for \$1,247.00 in fees, on work which appeared to be clerical in nature:

10/15/2008	Farooq, Maryam	General Admin	organizing Grace files	1.00	\$290	\$290
1/14/2009	Farooq, Maryam	General Admin	organizing Grace Billing file	3.00	\$290	\$870
3/12/2009	Duong, Jennifer	General Admin	Updated WR Grace consulting file	0.30	\$290	\$87
				<b>4.30</b>		<b>\$1,247</b>

There is authority in this district for adjusting rates downward for routine tasks. "Routine tasks, if performed by senior partners in large firms, should not be billed at their usual rates. A Michelangelo should not charge Sistine Chapel rates for painting a farmer's barn." *Ursic v. Bethlehem Mines*, 719 F.2d 670, 677 (3<sup>rd</sup> Cir. 1983). We have been consistent in recommending that clerical tasks be billed at no more than \$80.00 per hour. We asked Deloitte Tax to explain why these tasks should be compensated at the professionals' full hourly rate, and Deloitte Tax responded:

This paragraph references 4.30 hours in fees for certain tasks identified as "routine" and "clerical" that have been billed at rates higher than the rate of \$80.00 per hour recommended for such tasks. Deloitte Tax hereby agrees to reduce its fees for such tasks to the recommended rate of \$80.00 per hour. Accordingly, Deloitte Tax seeks compensation in the amount of \$344.00 for its performance of such tasks (4.30 x \$80.00 = \$344.00), thereby reducing the \$1,247.00 in fees sought for the performance of such tasks by \$903.00 (\$1,247.00 – \$344.00 = \$903.00).

We appreciate Deloitte Tax's response and recommend a reduction of \$903.00 in fees.

7. We noted the following meal expense for which more information was needed:

1/30/2009	Trotman, Sean P	Business meals during meeting with W.R. Grace	\$60.07
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In response to our inquiry, Deloitte Tax provided the following information: "This reimbursement pertains to lunch and dinner expenses incurred by Mr. Trotman while traveling to the Debtors' offices in Boca Raton, Florida for a meeting with Carol Finke, the Debtors' Tax Counsel." Our guidelines for lunch and dinner in most locales are \$35 and \$55, respectively. As this expense was for both lunch and dinner, we accept Deloitte Tax's response and have no objection to the expense.

#### **CONCLUSION**

8. Thus, we recommend approval of \$95,054.00 in fees (\$125,471.00 minus \$30,417.00) and \$2,143.00 in expenses for Deloitte Tax's services for the Application Period.

Respectfully submitted,

**WARREN H. SMITH & ASSOCIATES, P.C.**


By:   
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**FEE AUDITOR**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document has been served by First Class United States mail to the attached service list on this 24<sup>th</sup> day of May, 2010.

  
Warren H. Smith

## **SERVICE LIST**

### **Notice Parties**

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